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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120201086-2085-01]

RIN 0648-XA904

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2012 Atlantic Bluefish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2012 Atlantic bluefish fishery, including an annual catch limit, total allowable landings, a commercial quota and recreational harvest limit, and a recreational possession limit. The intent of this action is to establish the allowable 2012 harvest levels and other management measures to achieve the target fishing mortality rate, consistent with the Atlantic Bluefish Fishery Management Plan.

DATES: Comments must be received on or before [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA- NMFS-2012-0003, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal: <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, then enter NOAA- NMFS-

2012-0003 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- Fax: (978) 281-9135, Attn: Comments on 2012 Proposed Bluefish Specifications, NOAA- NMFS-2012-0003
- Mail and Hand Delivery: Dan Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on 2012 Bluefish Specifications.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The

specifications document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281-9224.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan (FMP) is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.16.

The FMP requires the Council to recommend, on an annual basis, annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) that will control fishing mortality (F). An estimate of annual discards is deducted from the ACT to calculate the TALs that can be harvested during the year by the commercial and recreational fishing sectors. The FMP requires that 17 percent of the ACT be allocated to the commercial fishery, with the remaining 83 percent allocated to the recreational fishery. The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TALs (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational

catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator. Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to ensure that they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the Federal Register, and after considering public comment, NMFS will publish final specifications in the Federal Register.

#### Proposed Specifications

#### Updated Model Estimates

According to Amendment 1 to the FMP, overfishing for bluefish occurs when  $F$  exceeds the fishing mortality rate that allows maximum sustainable yield ( $F_{MSY}$ ), or the maximum  $F$  threshold to be achieved. The stock is considered overfished if the biomass ( $B$ ) falls below the minimum biomass threshold, which is defined as  $\frac{1}{2} B_{MSY}$ . Amendment 1 also established that the long-term target  $F$  is 90 percent of  $F_{MSY}$  ( $F_{MSY} = 0.19$ , therefore  $F_{target} = 90$  percent of  $F_{MSY}$ , or 0.17), and the long-term target  $B$  is  $B_{MSY} = 324$  million lb (147,052 mt).

An age-structured assessment program (ASAP) model for bluefish was approved by the 41<sup>st</sup> Stock Assessment Review Committee (SARC 41) in 2005 to estimate  $F$  and annual biomass. In June 2011, the ASAP model was updated in order to estimate the current status of the bluefish stock (i.e., 2010 biomass and  $F$  estimates) and enable the Monitoring Committee and SSC to

recommend 2012 specifications using landings information and survey indices through the 2010 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2010,  $B_{2010} = 309.301$  million lb (140,297 mt); and (2) an estimated fishing mortality rate for 2010,  $F_{2010} = 0.14$ . Based on the updated 2010 estimate of bluefish stock biomass, the bluefish stock is not considered overfished:  $B_{2010}$  is slightly less than  $B_{MSY}$ , but well above the minimum biomass threshold,  $\frac{1}{2} B_{MSY} = 162$  million lb (73,526 mt). Estimates of  $F$  have declined from 0.41 in 1991 to 0.14 in 2010. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent  $F$  ( $F_{2010} = 0.14$ ) is less than the maximum  $F$  overfishing threshold specified by SARC 41 ( $F_{MSY} = 0.19$ ). Bluefish was declared rebuilt in 2009.

#### 2012 Catch Limits

Following the framework implemented by the Council's ACL Omnibus Amendment, the Council recommended that ACL be set to acceptable biological catch (ABC) (32.044 million lb, 14,535 mt). No deductions were recommended to account for management uncertainty, therefore  $ABC = ACL = ACT$ . The ACT is initially allocated between the recreational fishery (83 percent = 26.597 million lb, 12,064 mt) and the commercial fishery (17 percent = 5.448 million lb, 2,471 mt). After deducting an estimate of recreational discards (commercial discards are considered negligible), the recreational TAL would be 22.247 million lb (10,091 mt) and the commercial TAL would be 5.448 million lb (2,471 mt).

The FMP specifies that, if 17 percent of the ACT is less than 10.5 million lb, and recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the

ACT. The recreational harvest limit (RHL) would then be adjusted downward so that the ACT would be unchanged.

The Council postponed projections of estimated recreational harvest for 2012 until Marine Recreational Fisheries Statistics Survey (MRFSS) landings data through Wave 5 of 2011 became available. In the interim, the 3-year average of recreational landings from 2008 through 2010 (16.216 million lb, 7,355 mt) was applied as the estimated recreational harvest for 2012. As such, it was expected that a transfer of up to 5.052 million lb (2,291 mt) from the recreational sector to the commercial sector could be approved. This option represents the preferred alternative recommended by the Council in its specifications document. The actual transfer amount in the final rule, if any, will depend on the 2011 recreational landings data.

#### RSA

Three research projects that would utilize bluefish RSA quota have been preliminarily approved and forwarded to NOAA's Grants Management Division. An 847,997-lb (385-mt) RSA quota is preliminarily approved for use by these projects during 2012. Proportional adjustments of this amount to the commercial and recreational allocations would result in a final commercial quota of 10.185 million lb (4,620 mt) and a final RHL of 17.234 million lb (7,817 mt). NMFS staff will update the commercial and recreational allocations based on the final 2012 RSA awards as part of the final rule for the 2012 specifications.

#### Proposed Recreational Possession Limit

The Council recommended, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

#### Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2012 commercial quota

are shown in Table 1, based on the percentages specified in the FMP. These quotas do not reflect any adjustments for quota overages that may have occurred in some states in 2011. Any potential deductions for states that exceeded their quota in 2011 will be accounted for in the final rule.

Table 1. Proposed Bluefish Commercial State-by-State Allocations for 2012 (including RSA deductions).

<b>State</b>	<b>Percent Share</b>	<b>2012 Council-Proposed Commercial Quota (lb)</b>	<b>2012 Council-Proposed Commercial Quota (kg)</b>
ME	0.6685	68,087	30,884
NH	0.4145	42,217	19,149
MA	6.7167	684,096	310,301
RI	6.8081	693,405	314,523
CT	1.2663	128,973	58,501
NY	10.3851	1,057,722	479,775
NJ	14.8162	1,509,030	684,485
DE	1.8782	191,295	86,770
MD	3.0018	305,733	138,678
VA	11.8795	1,209,927	548,814
NC	32.0608	3,265,392	1,481,158
SC	0.0352	3,585	1,626
GA	0.0095	968	439
FL	10.0597	1,024,580	464,742
Total	100.0001	10,185,000	4,619,840

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the

Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), which describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the SUMMARY. A summary of the analysis follows. A copy of this analysis is available from the Council (see ADDRESSES).

Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to \$4.0 and \$6.5 million, respectively. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters. All federally permitted vessels fall into the definition of small businesses; thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule.

An active participant in the commercial sector was defined as any vessel that reported having landed 1 or more lb (0.45 kg) in the Atlantic bluefish fishery in 2010 (the most recent year for which there are complete data). The active participants in the commercial sector were defined using two sets of data. The Northeast seafood dealer reports were used to identify 718 vessels that landed bluefish in states from Maine through North Carolina in 2010. However, the Northeast dealer database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 732



vessels<sup>1</sup> that landed bluefish in North Carolina and 827 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero in 2010, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. Therefore, this analysis assumed that no vessel activity for these two states took place in 2010. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

The IRFA in the Draft EA addressed three alternatives (including a no action/status quo alternative) for the 2012 Atlantic bluefish fishery. All quota alternatives considered in this analysis are based on various commercial harvest levels for bluefish (a low, medium, and high level of harvest). For analysis of impacts of Alternatives 1 and 2, the maximum potential RSA quota of 3 percent of the TAL (847,997 lb, 384 mt) was used. For analysis of impacts of Alternative 3, the status quo RSA quota of 105,000 lb (48 mt) was used. For analysis of impacts of Alternative 1, the recommended transfer of 5.052 million lb (2,291 mt) from the recreational sector to the commercial sector was used. For analysis of impacts of Alternative 3, the transfer of 4.770 million lb (2,164 mt) from the recreational sector to the commercial sector was used, which is the same as the 2011 transfer amount. Under Alternative 2, no transfer of bluefish would be made from the recreational sector to the commercial sector, and the allocation of the TAL would be based strictly on the percentages specified in the FMP (17 percent commercial, 83

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<sup>1</sup> Some of these vessels were also identified in the Northeast dealer data; therefore, double counting is possible.

percent recreational).

Alternatives 1 and 2 would implement a TAL of 27.694 million lb (12,562 mt).

Alternative 3 would implement status quo management measures for 2012, which would result in a TAL identical to the 2011 TAL, or 27.293 million lb (12,380 mt). The proposed 2012 Atlantic bluefish specification alternatives are shown in Table 2, along with the resulting commercial quota and RHL after any applicable transfer described earlier in the preamble and after deduction of the RSA quota. Alternative 1 (Council's preferred) would allocate 10.185 million lb (4,620 mt) to the commercial sector and 17.234 million lb (7,817 mt) to the recreational sector.

Alternative 2 would result in the most restrictive commercial quota and would allocate 5.284 million lb (2,397 mt) to the commercial sector and leave 22.134 million lb (10,040 mt) available to the recreational sector. Alternative 3 (status quo) would allocate 9.375 million lb (4,252 mt) to the commercial sector and 17.813 million lb (8,080 mt) to the recreational sector. This alternative would also implement the status quo RSA level, which is currently approved for 105,000 lb (48 mt).

Table 2. Proposed 2012 Atlantic Bluefish Specification Alternatives for TAL, Commercial Quota, and RHL (million lb).

	TAL	Commercial Quota	RHL
Alternative 1	27.694 (12,562 mt)	10.185 (4,620 mt)	17.234 (7,817 mt)
Alternative 2	27.694 (12,562 mt)	5.284 (2,397 mt)	22.134 (10,040 mt)
Alternative 3	27.293 (12,380 mt)	9.375 (4,252 mt)	17.813 (8,080 mt)

### Commercial Fishery Impacts

To assess the impact of the alternatives on commercial fisheries, the Council conducted a threshold analysis and analysis of potential changes in ex-vessel gross revenue that would result

from each alternative, using Northeast dealer reports and South Atlantic Trip Ticket reports.

Under Alternative 1, the recommended commercial quota for 2012 is approximately 40 percent higher than 2010 commercial landings. When this commercial quota is distributed to the states from Maine to Florida (based on the percentages specified in the FMP), each state's 2012 quota is higher than its 2010 landings. Results of the threshold analysis from dealer data estimated that there would be no revenue change relative to 2010 for vessels that reported landings of bluefish in 2010. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2012, as was done in 2011 and frequently in previous years, the number of affected entities could change, thus changing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

Alternative 2 would result in a commercial quota 28 percent below the 2010 commercial landings. Although the overall commercial quota is lower than 2010 commercial landings, when distributed to the states, each state's 2012 quota is higher than its 2010 landings, except for Massachusetts, New York, New Jersey, and North Carolina. For these states, 2012 commercial landings would be constrained by the 2012 commercial quota under Alternative 2. The threshold analysis projected that 464 vessels could incur revenue losses of less than 5 percent and 62 vessels could incur revenue losses of 5 percent or more. Of the vessels likely to be impacted with revenue reductions of 5 percent or more, 34 percent had gross sales of \$1,000 or less and 55 percent had gross sales of \$10,000 or less, which may indicate that the dependence on fishing for some of these vessels is small.

Under Alternative 3, the 2011 commercial quota is approximately 29 percent higher than the 2010 commercial landings. Most states show a similar increase in fishing opportunities under this alternative; however, North Carolina's 2012 commercial quota would be lower than its

2010 commercial landings. Analysis of Alternative 3 concluded that 644 vessels would likely have no change in revenue relative to 2010, and 74 vessels were projected to incur revenue losses of less than 5 percent. No revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida under Alternative 3. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2012, as was done in 2011 and frequently in previous years, the number of affected entities described above could decrease, thus decreasing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

#### Recreational Fishery Impacts

For Alternative 1, the recommended RHL for the recreational sector (17.234 million lb, 7,817 mt) is approximately 7 percent above the recreational landings for 2010 (16.166 million lb, 7,333 mt) and 3 percent below the RHL implemented for 2011 (17.813 million lb, 8,080 mt). It is not anticipated that the recommend RHL will result in decreased in the demand for party/charter boat trips or affect angler participation in a negative manner. At the present time, there are neither behavioral or demand data available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. However, given the level of the adjusted recreational harvest limit for 2012 and recreational landings in recent years, it is possible that given the proposed recreational harvest limits under Alternative 1, the demand for party/charter boat trips may not be negatively impacted. The impacts under Alternative 2 and 3 are expected to be similar to the recreational impacts under Alternative 1. The IRFA analyzed the maximum transfer amount from the recreational sector to the commercial sector, but future updates of recreational harvest projections could result in a smaller transfer amount, resulting in a high RHL.

The 2012 RHL under Alternative 2 would be 37 percent higher than the recreational landings in 2010 and 49 percent higher than the 2011 RHL. Under Alternative 3, the 2012 RHL would be 37 percent higher than 2010 recreational landings and less than 1 percent lower than the 2011 RHL. Thus, Alternatives 2 and 3 are not expected to have any negative effects on recreational fishermen or the demand for party/charter boat trips. In addition, neither of these alternatives are expected to result in recreational landings in excess of the RHL.

#### RSA Quota Impacts

For analysis of each alternative, the maximum RSA quota amount (3 percent of the TAL) was deducted from the initial overall TAL for 2012 to derive the adjusted 2012 commercial quota and RHL under each alternative. Thus, the threshold analyses for each alternative accounted for overall reductions in fishing opportunities due to RSA. Specification of RSA quota for 2012 is expected to benefit all participants in the fishery as a result of improved data and information for management or stock assessment purposes.

#### Summary

The Council recommended Alternative 1 over Alternatives 2 and 3 because it is projected to achieve the target F in 2012, while providing the second least restrictive commercial quota among the alternatives analyzed. Alternative 2 was not recommended by the Council because it would yield the lowest commercial fishing opportunities among the alternatives due to an absence of a quota transfer under this alternative. Alternative 3 was not selected because it would more restrictive than necessary given the advice of the SSC and Monitoring Committee.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 9, 2012

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Alan D. Risenhoover,  
Acting Deputy Assistant Administrator  
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National Marine Fisheries Service.

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